

AMENDED IN ASSEMBLY MARCH 9, 2009

AMENDED IN ASSEMBLY MARCH 2, 2009

CALIFORNIA LEGISLATURE—2009–10 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 23

Introduced by Assembly Members Coto and Arambula

(Principal coauthor: Assembly Member Swanson)

**(Coauthors: Assembly Members Carter, Feuer, Hayashi, Jones, Nava,
and Torres)**

(Coauthor: Senator DeSaulnier)

January 15, 2009

An act to amend Sections ~~1275 and 1277.5 of, to add Sections 1277.1 and 1329.5 to, and to add and repeal Section 4003.5 of, 1275, 1277.5, 4003, and 4004 of, and to add Sections 1277.1 and 1329.5 to, the~~ Unemployment Insurance Code, relating to unemployment insurance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 23, as amended, Coto. Unemployment insurance.

(1) Under existing law, unemployment compensation benefits are based on wages paid in a base period that is calculated according to the month within which the benefit year begins.

This bill would, for new claims filed on or after ~~July 1, 2009~~ *January 1, 2010*, for which a valid claim or benefit year cannot be established under the currently defined base periods, establish alternative base periods, as provided. ~~The bill also would provide that these provisions shall become operative only if specified federal legislation is passed by Congress and signed by the President in the 2009 calendar year.~~ This

bill would also require a claimant to submit specified information regarding wages to the Employment Development Department via an affidavit, under specified conditions.

Because this measure would increase the amount of unemployment compensation paid, it would make an additional amount payable from the Unemployment Fund, a continuously appropriated special fund, and thereby would make an appropriation.

Because this measure would require specified information to be submitted to the Employment Development Department on an affidavit, the submission of which, if false, is a misdemeanor under existing law, it would impose a state-mandated program.

(2) Existing law provides that, for purposes of eligibility for federal-state extended benefits, an individual have earnings that exceed either 40 times his or her most recent weekly benefit amount or 1.5 times the highest quarter in the base period, and precludes the implementation of the alternative eligibility requirement for federal-state extended benefits unless the Director of the Employment Development Department determines that these provisions have been approved by the United States Department of Labor.

The federal Supplemental Appropriations Act of 2008, created the Emergency Unemployment Compensation (EUC) Program on June 30, 2008, which provides for the payment of up to 13 weeks of federally funded emergency unemployment compensation (EUC) benefits to eligible unemployed individuals nationwide who had already collected all regular state benefits for which they were eligible. The federal Unemployment Compensation Extension Act of 2008, which was enacted on November 21, 2008, further expanded the EUC Program to provide for the payment of 20 weeks of benefits nationwide, and provides for the payment of 13 more weeks of benefits to eligible unemployed individuals in states with high unemployment rates, as determined by specified criteria. The federal American Recovery and Reinvestment Act of 2009, which was enacted on February 17, 2009, extends to ~~June 30~~ May 31, 2010, the period of time during which claims for EUC benefits can be filed and paid.

The bill would provide for the payment of temporary federal-state EUC benefits authorized under the Supplemental Appropriations Act of 2008, the Unemployment Compensation Extension Act of 2008, and the American Recovery and Reinvestment Act of 2009 to eligible individuals in this state until December 6, 2009, or until a specified

provision of federal law providing for the payment of those benefits expires, whichever is later.

~~This bill would provide, until June 30, 2010, for the payment of temporary federal-state EUC benefits authorized under the Supplemental Appropriations Act of 2008, the Unemployment Compensation Extension Act of 2008, and the American Recovery and Reinvestment Act of 2009 to eligible individuals in this state, during specified weeks that the state is experiencing periods of high unemployment, as determined in accordance with prescribed indicators that trigger the payment of those extended benefits, as provided.~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1275 of the Unemployment Insurance
2 Code is amended to read:
3 1275. (a) Unemployment compensation benefit award
4 computations shall be based on wages paid in the base period.
5 “Base period” means: for benefit years beginning in October,
6 November, or December, the four calendar quarters ended in the
7 next preceding month of June; for benefit years beginning in
8 January, February, or March, the four calendar quarters ended in
9 the next preceding month of September; for benefit years beginning
10 in April, May, or June, the four calendar quarters ended in the next

1 preceding month of December; for benefit years beginning in July,
2 August, or September, the four calendar quarters ended with the
3 next preceding month of March. Wages used in the determination
4 of benefits payable to an individual during any benefit year may
5 not be used in determining that individual's benefits in any
6 subsequent benefit year.

7 (b) For any new claim filed with an effective date on or after
8 ~~July 1, 2009~~ *January 1, 2010*, if an individual cannot establish a
9 claim under subdivision (a), then "base period" means: for benefit
10 years beginning in October, November, or December, the four
11 calendar quarters ended in the next preceding month of September;
12 for benefit years beginning in January, February, or March, the
13 four calendar quarters ended in the next preceding month of
14 December; for benefit years beginning in April, May, or June, the
15 four calendar quarters ended in the next preceding month of March;
16 for benefit years beginning in July, August, or September, the four
17 calendar quarters ended in the next preceding month of June. As
18 provided in Section 1280, the quarter with the highest wages shall
19 be used to determine the individual's weekly benefit amount.
20 Wages used in the determination of benefits payable to an
21 individual during any benefit year ~~shall~~ *may* not be used in
22 determining that individual's benefits in any subsequent benefit
23 year.

24 ~~(e) The amendments made to this section by the act adding this~~
25 ~~subdivision shall become operative only if federal legislation~~
26 ~~authorizing additional federal funding to implement an alternative~~
27 ~~base period, as described in subdivision (b), is passed by Congress~~
28 ~~and signed by the President in the 2009 calendar year.~~

29 SEC. 2. Section 1277.1 is added to the Unemployment
30 Insurance Code, to read:

31 1277.1. (a) Notwithstanding Section 1277, if an individual
32 has a subsequent new claim and the previous valid claim was filed
33 under subdivision (b) of Section 1275, the new claim shall only
34 be valid if, during the 52-week period beginning with the effective
35 date of the previous claim, either of the following applies:

36 (1) The individual earned or was paid sufficient wages to meet
37 eligibility requirements of subdivision (a) of Section 1281 and
38 performed some work.

39 (2) The individual did not receive benefits under this part and
40 was disabled and was entitled to receive wage loss benefits under

1 Part 2 (commencing with Section 2601) of this code or under
2 Division 4 (commencing with Section 3201) of the Labor Code,
3 under any workers' compensation law, under employer's liability
4 law, or under any disability insurance law of any other state or the
5 federal government.

6 (b) For purposes of this section, "wages" includes any and all
7 compensation for personal services performed as an employee for
8 the purpose of meeting the eligibility requirements of subdivision
9 (a) of Section 1281. This subdivision is not applicable to the
10 computation of an award for disability benefits.

11 SEC. 3. Section 1277.5 of the Unemployment Insurance Code
12 is amended to read:

13 1277.5. In determining, under Sections 1277 and ~~1227.1~~ 1277.1,
14 whether a new claim is valid, twice the amount that an individual
15 was entitled to receive under Part 2 (commencing with Section
16 2601) of this division or under Division 4 (commencing with
17 Section 3201) of the Labor Code, or under any workers'
18 compensation law, employer's liability law, or disability insurance
19 law of any other state or of the federal government, during the
20 52-week period beginning with the effective date of the previous
21 valid claim, shall be considered as wages earned or paid to the
22 individual during that 52-week period for purposes of meeting the
23 eligibility requirements of subdivision (a) of Section 1281. The
24 amounts so included shall not be considered wages for the purpose
25 of computing the weekly benefit amount of the individual under
26 Section 1280 or the maximum amount payable to the individual
27 under Section 1281.

28 SEC. 4. Section 1329.5 is added to the Unemployment
29 Insurance Code, to read:

30 1329.5. For purposes of a claim for unemployment benefits
31 under subdivision (b) of Section 1275, all of the following apply:

32 (a) Computation using the last four completed calendar quarters
33 shall be based on available wage information processed as of the
34 close of business on the day preceding the date of application.

35 (b) If the wage information is not already in the department's
36 system, the employer shall, within 10 days after the mailing of the
37 request from the department, transmit to the department
38 information on the employee's wages and any other information
39 relevant to the request. The 10-day period may be extended for
40 good cause.

(c) If the wage, and other relevant information, requested pursuant to subdivision (b) are not received by the department, the department shall accept an affidavit of wages and other relevant information from the claimant in accordance with authorized regulations. These regulations shall be adopted as emergency regulations.

(d) A determination of benefits made pursuant to subdivision (b) of Section 1275 shall be adjusted when the quarterly wage report from the employer is received if that information causes a change in the determination.

(e) Except in the event of fraud, if it is determined that any information provided by the claimant on an affidavit is erroneous, no penalty or refund of benefits shall be imposed on the claimant for the period prior to the calendar week in which an employer provides subsequent wage information.

~~SEC. 5. Section 4003.5 is added to the Unemployment Insurance Code, to read:~~

~~4003.5. (a) For purposes of this part, “federal-state extended benefits” also includes the payment of emergency unemployment compensation (EUC) benefits payable under the federal Supplemental Appropriations Act of 2008 (Public Law 110-252); the Unemployment Compensation Extension Act of 2008 (Public Law 110-449) and the American Recovery and Reinvestment Act of 2009 (H.R. 1) pursuant to this section.~~

~~(b) There is an “on” indicator for purposes of federal-state extended benefits provided under this section for a week in which any of the following apply:~~

~~(1) The rate of insured unemployment for the period consisting of that week and the immediately preceding 12 weeks equaled or exceeded 120 percent of the average of those rates for the corresponding 13-week period in each of the preceding calendar years, and equaled or exceeded 5 percent.~~

~~(2) The rate of insured unemployment consisting of that week and the immediately preceding 12 weeks equaled or exceeded 6 percent, regardless of the rate of insured unemployment during the previous two calendar years.~~

~~(3) With respect to benefits for weeks of unemployment beginning on or after January 1, 2009, both of the following apply:~~

~~(A) The average rate of total unemployment that is seasonally adjusted, as determined by the United States Secretary of Labor,~~

for the period consisting of the most recent three months for which data for all states are published before the close of that week equals or exceeds 6.5 percent.

(B) The average rate of total unemployment in the state that is seasonally adjusted, as determined by the United States Secretary of Labor, for the three-month period referred to in subparagraph (A) equals or exceeds 110 percent of that average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(4) The average rate of total unemployment in the state for any period of a week, and the immediately preceding 12 weeks equals or exceeds 8 percent.

(e) There is an “off” period indicator for a week if, for the period consisting of that week and the immediately preceding 12 weeks, none of the criteria specified in subdivision (b) result in an “on” indicator.

(d) This section shall remain in effect only until June 30, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2010, deletes or extends that date.

SEC. 5. Section 4003 of the Unemployment Insurance Code is amended to read:

4003. (a) The provisions and definitions of terms in the “Federal-State Extended Unemployment Compensation Act of 1970,” as amended by the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35), apply to this part. “Federal-state extended benefits” means benefits payable under this part.

(b) There is an “on” indicator for purposes of federal-state extended benefits for a week in which the rate of insured unemployment for that week and the immediately preceding 12 weeks equals or exceeds either any of the following:

(1) One hundred twenty percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years, and equals or exceeds 5 percent.

(2) Six percent.

(3) (A) *With respect to weeks of unemployment beginning on or after February 1, 2009, both of the following apply:*

(i) *The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent three months*

1 for which data for all states are published before the close of that
2 week equals or exceeds 6.5 percent.

3 (ii) The average rate of total unemployment in the state,
4 seasonally adjusted, as determined by the United States Secretary
5 of Labor, for the three month period referred to in clause (i) equals
6 or exceeds 110 percent of that average for either or both of the
7 corresponding three month periods ending in the two preceding
8 calendar years.

9 (B) This paragraph shall apply to benefits for weeks on or after
10 February 1, 2009, and shall become inoperative on December 6,
11 2009, or on the date the federal sharable extended compensation
12 and sharable regular compensation authorized by subdivision (a)
13 of Section 2005 of Public Law 111-5 expires, whichever is later.

14 (c) There is an “off” indicator for a week if, for the period
15 consisting of that week, and the immediately preceeding 12 weeks,
16 none of the criteria specified in subdivision (b) results in an “on”
17 indicator.

18 ~~(e) There is an “off” indicator for a week in which the rate of~~
19 ~~insured unemployment for that week and the immediately~~
20 ~~preceeding 12 weeks is less than 6 percent and also less than either~~
21 ~~of the following:~~

22 ~~(1) One hundred twenty percent of the average of the rates for~~
23 ~~the corresponding 13-week period ending in each of the preceding~~
24 ~~two calendar years.~~

25 ~~(2) Five percent.~~

26 (d) For purposes of this section, the rate of insured
27 unemployment for a 13-week period shall be determined by
28 reference to the average monthly covered employment for the first
29 four of the most recent six calendar quarters ending before the
30 close of the period. This section shall be effective with respect to
31 compensation for weeks of unemployment after September 25,
32 1982. ~~The provisions of this section in effect prior to that date shall~~
33 ~~continue to apply to weeks after March 30, 1977, but prior to~~
34 ~~September 25, 1982.~~

35 (e) The indicators specified in subdivisions (b) and (c) shall be
36 operative only if mandated or permitted by federal law. Any
37 amendments to the Federal-State Extended Unemployment
38 Compensation Act of 1970, enacted before January 1, 1983, which
39 mandate or permit any reduction in the insured unemployment rate

indicator described in this section shall be operative on the effective date of the amendment.

(f) Notwithstanding any other provision of this part, the Governor may, if permitted by federal law, suspend the payment of extended duration benefits under this part, to the extent necessary to ensure that otherwise eligible individuals are not denied, in whole or in part, the receipt of emergency unemployment compensation benefits authorized by the federal Emergency Unemployment Compensation Act of 1991 (~~P.L. 102-164~~) (*Public Law 102-164*) or any extension of that act including, but not limited to, (Public Law 102-244), and that the state receives maximum reimbursement from the federal government for the payment of those emergency benefits.

SEC. 6. Section 4004 of the Unemployment Insurance Code is amended to read:

4004. (a) The department shall establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in ~~such~~ that account, subject to subdivision (b) of this section, shall be not less than whichever of the following is the least:

(1) Fifty percent of the total amount of regular compensation payable to him *or her* during ~~such~~ that benefit year under this division.

(2) Thirteen times his *or her* average weekly benefit amount.

(3) Thirty-nine times his *or her* average weekly benefit amount, reduced by the regular compensation paid to him *or her* during ~~such~~ that benefit year under this division.

(b) The amount determined under subdivision (a) of this section shall be reduced by the aggregate amount of additional compensation paid to the individual under Part 3 (commencing with Section 3501) of this division for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

(c) For purposes of subdivision (a) of this section, an individual's weekly benefit amount for a week is the amount of regular compensation under Part 1 (commencing with Section 100) of this division payable to such individual for such week of total unemployment.

1 (d) (1) *With respect to weeks beginning in a high-unemployment*
2 *period, the total extended compensation amount payable to an*
3 *eligible individual in the applicable benefit year shall be not less*
4 *than whichever of the following is the least:*

5 (A) *Eighty percent of the total amount of regular compensation*
6 *payable to him or her during that benefit year under this division.*

7 (B) *Twenty times his or her average weekly benefit amount.*

8 (C) *Forty-six times his or her average weekly benefit amount,*
9 *reduced by the regular compensation paid to him or her during*
10 *that benefit year under this division.*

11 (2) *For purposes of this section, “high-unemployment period”*
12 *means a period during which an extended benefit period would*
13 *be in effect if clause (i) of subparagraph (A) of paragraph (3) of*
14 *subdivision (b) of Section 4003 were applied by substituting 8*
15 *percent for 6.5 percent.*

16 (3) *To the extent permitted by federal law, if an individual*
17 *continues to meet all other applicable eligibility requirements, the*
18 *department shall not require that individual to reapply for benefits*
19 *to which he or she is entitled under this part.*

20 (4) *This subdivision shall apply to benefits for weeks on or after*
21 *February 1, 2009, and shall become inoperative on December 6,*
22 *2009, or on the date the federal sharable extended compensation*
23 *and sharable regular compensation authorized by subdivision (a)*
24 *of Section 2005 of Public Law 111-5 expires, whichever is later.*

25 ~~SEC. 6.~~

26 SEC. 7. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 ~~SEC. 7.~~

36 SEC. 8. This act addresses the fiscal emergency declared by
37 the Governor by proclamation on December 19, 2008, pursuant
38 to subdivision (f) of Section 10 of Article IV of the California
39 Constitution.

1 ~~SEC. 8.~~

2 *SEC. 9.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety within
4 the meaning of Article IV of the Constitution and shall go into
5 immediate effect. The facts constituting the necessity are:

6 In order to stimulate the state's weakening economy as soon as
7 possible, it is necessary that this act take effect immediately.

O